

ORDINANCE 5611

AN ORDINANCE OF THE CITY OF FREMONT, NEBRASKA AMENDING ORDINANCE 3970 AND FREMONT MUNICIPAL CODE CHAPTER 10, ARTICLE 2, PROVIDING FOR THE LICENSING AND REGULATION OF PEDLERS AND SOLICITORS, AND REPLACING PROCEDURES SET FORTH IN RESOLUTION 2011-078 REGULATING STREET VENDORS; PROVIDING FOR REPEAL OF ORDINANCES AND RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council for the City of Fremont, Nebraska, seeks to promote the health, safety, morals, and the general welfare of the community; and

WHEREAS, the City Municipal Code Chapter 10, Article 2 covering Peddlers and Solicitors was approved September 25, 2001; and

WHEREAS, the City Resolution 2011-078 defining street vending was approved on May 31, 2011; and

WHEREAS, a request for a Municipal Code change to Chapter 10 Article 2 that would incorporate and cover regulation of mobile street vendors was received; and

WHEREAS, the City has determined that the requested Municipal Code changes and regulations are necessary and appropriate;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FREMONT, NEBRASKA, AS FOLLOWS:

CHAPTER 10 ARTICLE 2. - PEDLERS, SOLICITORS AND MOBILE FOOD VENDORS

Sec. 2-210 - Mobile Food Vendors

Sec. 10-211 - Findings and Purpose.

Mobile food vendors provide a beneficial service to the general public within the City while, due to their distinct manner of operation, also presenting substantial differences in circumstances from other food retailers and vehicle users, which suggest the expediency of diverse legislation. It is, therefore desirable to regulate, and require licenses for, mobile food vendors so that their transitory use of various properties and right-of-way locations can occur in a fair and safe manner, and so that public safety and welfare can be protected. The purpose of this section is to enact regulations to serve those goals.

While the City wishes to encourage the business of mobile food vendors, the City also recognizes the benefits of permanent food establishments. The owners of permanent food establishments make substantial and long-lasting capital

investments in buildings, infrastructure, and the built environment. These investments benefit the City, improve real property, and provide consistent locales for the entertainment and enjoyment of City residents and visitors. The City wishes to cultivate and encourage the creation and maintenance of permanent food establishments. Accordingly, it is also the purpose of this section to encourage the co-existence of mobile food vendors and permanent food establishments, to provide appropriate places for each within the fabric of the City, and to accommodate the interests of each, toward the goal of achieving a rich and diverse community.

Sec. 10-212. - Definitions.

For the purpose of this article and section the following terms shall have the meanings respectively ascribed to them:

Food shall mean any raw, cooked, or processed edible substance, non-alcoholic beverage, ingredient, ice, or water used or intended for use or for sale in whole or in part for human consumption.

License Administrator shall mean the City Clerk, or his/her authorized designee.

Mobile Food Vendor shall mean a person who by traveling from place to place upon the public ways sells or offers for sale or to provide food from public or private property to consumers for immediate delivery and consumption; this includes mobile ice cream trucks. The following activities are excluded from such definition, and, alone, do not subject a vendor to being covered by such definition: (a) the sale or offer for sale of farm products produced or raised by such a vendor from land occupied and cultivated by him/her; or (b) the sale or offer for sale of food by a caterer as defined in elsewhere in City Code.

Motor Vehicle shall mean any motorized vehicle used for displaying, storing, or transporting articles for sale by a vendor which is required to be licensed and registered by the state department of motor vehicles of any state.

Permanent Food Establishment shall mean a fixed building which a person occupies on a continual basis and from which such person sells or offers to sell food for immediate delivery and consumption upon purchase. Such term shall not include a location where a mobile food vendor sells or offers to sell food.

Public space includes all City-owned parks and city-owned property within street rights-of-way, including any roadways and sidewalks.

Public way shall mean all areas legally open to public use such as public streets, sidewalks, roadways, highways, parkways, alleys, parks, as well as the areas surrounding and immediately adjacent to public buildings.

Pushcart (Food cart) shall mean any wheeled non-motorized vehicle approved by the License Administrator and in accordance with this article and section designed for carrying property and for being pushed by a person without the assistance of a motor or motor vehicle.

Sidewalk shall mean all that area legally open to public use as a pedestrian public way between the curb line and the legal building line of the abutting property.

Special event shall mean any occasion including but not limited to fairs, shows, exhibitions, city-wide celebrations, and festivals taking place within a specifically defined area of the City of Fremont, Nebraska for a period of time not to exceed three days.

Stand shall mean any showcase, table, bench, rack, handcart, pushcart, stall or any other fixture or device that is used for the purpose of displaying, exhibiting, carrying, transporting, storing, selling or offering for sale any food, beverages, goods, wares or merchandise upon a sidewalk.

Street shall mean all that area legally open to public use as public streets, and sidewalks, roadways, highways, parkways, alleys and any other public way.

Vehicle shall mean every device in, upon, or by which a person or property may be transported or drawn upon a street or sidewalk, including, but not limited to, devices moved by human power.

Sec. 10-213. - License required.

It shall be unlawful for any person to sell, offer for sale or provide food, as defined in this section, as a mobile food vendor or operate as a mobile food vendor within the City unless such person complies with the requirements and regulations of this section, including holding a valid and active mobile food vendor license issued by the License Administrator under this section.

Any license or permit issued by the License Administrator shall be carried with the licensee whenever they are engaged in vending. Identification badges and certificates of health inspection shall also be properly and conspicuously displayed at all times during the operation of the vending business.

An identification badge shall be deemed to be properly displayed when it is attached to the outer garment of the vendor and clearly visible to the public and law enforcement officials. A certificate of health inspection shall be deemed to be properly displayed when attached to the vending pushcart, vehicle, stand or other conveyance, and clearly visible to the public and law enforcement officials,

Sec. 10-214. - Application.

An applicant for a license pursuant to this section shall file with the License Administrator a signed application on a form furnished by the City, which shall contain the following information:

- (a) The applicant's business name, address, and phone number; and e-mail address, if any;
- (b) If the applicant is a corporation, partnership, or other entity, the names of all officers and managers of such entity;
- (c) If food is to be sold from any motor vehicle, the vehicle license numbers and descriptions of all vehicles from which the applicant proposes to sell food, and the names of all persons expected to drive such vehicles;
- (d) The description of the general type of food items to be sold;
- (e) Documentation from the State of Nebraska Department of Agriculture Food and Sales Consumer Inspection Division showing its approval of the applicant's sale of food, if required;
- (f) A copy of the State of Nebraska sales tax permit, or proof of an applicable sales tax exemption, for the

applicant;

(g) A general description of the types of locations the applicant anticipates selling from;

(h) Such other information as the License Administrator may require and as requested in the said application form.

All vendors shall assure that a current and correct name, residence address and mailing address are on file with the License Administrator. Whenever either the name or address provided by a licensed vendor on their application for vending license changes, the licensee shall notify the License Administrator in writing within seven days of such change and provide the same with the name change or address change.

Sec. 10-215. - Issuance or denial.

(a) Upon receipt of a complete application for a license pursuant to this section, the License Administrator shall make or cause to be made any inquiry or investigation that may be necessary to determine whether the applicant is in compliance with the provisions of all applicable laws and this section of Code. The License Administrator may request and take into consideration the recommendations of other affected departments of the City.

(b) After receipt of the completed application and application fee, the License Administrator shall either approve or deny the application.

Grounds for denial may include, but are not limited to, the following:

- (1) A finding that the application is incomplete;
- (2) The nonpayment of applicable fees;
- (3) A finding that the application is not in conformance with any applicable laws including, but not limited to, this Chapter and Section of Code.
- (4) A finding that the applicant has been convicted of three or more separate violations of the provisions of this section within the 12 months preceding the submission of a complete application.

Sec. 10-216. - License fee.

An application for an annual license under this section shall be accompanied by a nonrefundable processing fee of \$100.00. An additional nonrefundable processing fee of \$100.00 shall be paid by a mobile food vendor who will be primarily doing business within the boundaries of any business improvement district located in whole or in part within the area zoned as a downtown business district. If such additional fee is paid, such fact shall be noted on the mobile food vendor's license. A mobile food vendor may primarily do business within such area only upon exhibiting a license showing payment of the additional fee. The additional fees paid under this section shall be forwarded by the City over to the said business improvement district, to offset expenses incurred by the district for cleaning, security, sanitation, and other mobile food vendor-associated maintenance expenses within the boundaries of the said district.

Sec. 10-217. - Renewal.

A license issued under this section shall expire on March 31 of each year, unless renewed for the following year by the

permittee. The permittee shall renew the license for the following year by filing with the License Administrator, by April 1, a registration updating or confirming the information provided in the immediately preceding license application or registration. The registration shall be on a form provided by the License Administrator. At the time of registration, the permittee shall pay a renewal fee of \$100.00 per year for each motor vehicle, trailer, cart, or other piece of mobile equipment to be utilized in the business. An additional renewal fee of \$100.00 shall be paid by a mobile food vendor who will be primarily doing business within the boundaries of any business improvement district located in whole or in part within the area zoned as a downtown business district. If such additional fee is paid, such fact shall be noted on the receipt or other documentation of renewal issued to the mobile food vendor. A mobile food vendor may primarily do business within such area only upon exhibiting a receipt or other documentation showing payment of the additional fee for that year. The additional fees paid under this section shall be forwarded by the City *over* to the said business improvement district, to offset expenses incurred by the district for cleaning, security, sanitation, and other mobile food vendor-associated maintenance expenses within the boundaries of the said district. Vendors who have paid vendor licensing fees under the City's prior vendor licensing policy now covered by this section shall have their fee payments credited toward the license obtained under this section.

Sec. 10-218. - Sales regulations.

Mobile food vendors shall comply with the following regulations:

(a) A mobile food vendor shall not sell nor offer to sell food from a location within 50 feet of the main entrance used by customers to enter or exit a permanent food establishment during the hours food is sold within such permanent food establishment, unless each such permanent food establishment within such area has provided written consent.

(b) A motor vehicle from which a mobile food vendor sells or offers to sell food shall not exceed 40 feet in length and 96 inches in width. A mobile food vendor selling or offering the sale of food from or using a trailer or other auxiliary equipment shall, during such operations, keep the trailer or auxiliary equipment hitched to an operable motor vehicle towing it, unless otherwise permitted by the City in association with an authorized street show, festival, parade, block party, or similar *event*. An attached trailer or other auxiliary equipment shall not exceed 96 inches in width, and the combined length of the motor vehicle and trailer or auxiliary equipment shall not exceed 60 feet. The maximum dimensions in this subsection may be exceeded by a particular motor vehicle, trailer, or piece of equipment, if approved by the License Administrator upon a mobile food vendor's application for a waiver.

(c) A mobile food vendor may sell, offer to sell or provide food from a motor vehicle at a location in a City right-of-way open to traffic or parking, but only from a motor vehicle parked in a location where a motor vehicle is authorized to park by law, sign age, or City permit. Such a motor vehicle and auxiliary equipment shall not be parked at a diagonal parking space. Such a motor vehicle and auxiliary equipment shall not be parked in a parking space adjacent to the corner of a street intersection.

(d) A mobile food vendor who sells, offers to sell or provides food from a vehicle parked at a metered parking space shall pay the metered parking rate required. A mobile food vendor operating from a parking space on City right-of-way which is unmetered but which is limited by sign or other designation to two hours parking may park at such location up to, but not exceeding, four consecutive hours. The City may designate, by sign age, bagging, or otherwise, that a specific meter is either (1) reserved for the exclusive use of mobile food vendors, or (2) prohibited for use by mobile food vendors.

(e) A mobile food vendor shall not sell or offer to sell food from a location which would involve customers to be waited on or served while standing in a portion of a street being traversed by motor vehicle traffic.

(f) A mobile food vendor who sells, offers to sell or provide food from a location on property other than a metered parking space or City right-of-way shall first obtain and possess, and be able to exhibit upon request, each of the following:

- (1) Written consent of the owner of such property; and
- (2) A vending permit issued by the License Administrator

(g) A mobile food vendor shall not sell, offer to sell or provide food from City park property unless he/she obtains and possesses the written consent of the City parks director.

(h) A mobile food vendor shall not sell, offer to sell or provide food from a school property unless he/she possesses the written consent of an authorized representative of the school.

(i) A mobile food vendor shall not sell, offer to sell or provide food from a location within an area authorized for a street show, festival, parade, block party, or similar event, or within 200 feet of any boundary of such authorized area, unless the mobile food vendor is in possession of the written consent of the event permittee to sell, offer to sell or provide food from that location.

(j) A mobile food vendor shall not sell, offer to sell or provide food within City-owned sporting event or swimming pool areas, unless the mobile food vendor is in possession of written consent from the License Administrator authorizing the specific location and times for such sales activities, or is in possession of written consent from an authorized representative of the Sporting Authority.

(k) A mobile food vendor shall possess and be able to exhibit his/her license under this section, all required State of Nebraska Department of Agriculture Food and Sales Consumer Inspection Division Dodge permits, a State of Nebraska sales tax permit or proof of sales tax exemption, and any other written consents or documentation required under this section, at all times during which the mobile food vendor is selling or offering to sell food.

(l) An authorized employee of the public works or police departments may order a mobile food vendor to move from or leave a specific location, if the operation of the mobile food vendor at that location causes an obstruction to vehicular or pedestrian traffic or otherwise endangers the health, safety, or welfare of the public. The City may tow or otherwise move a mobile food vendor's vehicle or other auxiliary equipment to another location if the vehicle or equipment presents a danger to public safety and the mobile food vendor fails to move the same. The City parking division manager shall provide to the mobile food vendor a written explanation for any such order, upon written request by the mobile food vendor to the parking division manager.

(m) An individual representative of the mobile food vendor shall be present with the motor vehicle and other auxiliary equipment operated by the mobile food vendor at all times that it is parked and service is occurring in City right-of-way or on City property, and at all times that it is parked and service is provided on private property at a location where food is or will be provided or offered for sale.

(n) A mobile food vendor may sell, offer to sell or provide food seven days a week, but only from 6:00 a.m. to 1:00 a.m. It shall be unlawful for a mobile food vendor to sell, offer to sell or provide food at any other times. Notwithstanding this subsection, upon evidence of endangerment of public safety, the Chief of Police or his/her designee may further limit hours of operation for all mobile food trucks as needed for the protection of public safety.

(o) A mobile food vendor using a motor vehicle shall maintain a motor vehicle liability insurance policy for such motor vehicle as required by state law, and shall exhibit proof of such policy when requested.

(p) A mobile food vendor shall maintain in operable condition all fire suppression equipment or devices as required by local, state or federal law.

(q) It shall be unlawful for a mobile food vendor to sell, offer to sell or provide alcoholic drinks or food.

(r) A mobile food vendor shall visibly display his/her business name on his/her motor vehicle or auxiliary equipment.

(s) A mobile food vendor shall provide trash receptacles for the collection of trash and recyclable materials, in sizes sufficient to serve his/her customers. Prior to leaving a location, the mobile food vendor shall pick up and properly dispose of any trash, litter, or recyclable materials within 20 feet of the location. Receptacles and their contents shall be removed from the location for proper disposal or recycling, and contents shall not be deposited in public trash or recycling containers on City right-of-way or City property.

(t) A mobile food vendor shall not place on City right-of-way or City property any freestanding sign, table, electric generator, or other fixture or equipment; provided, that a mobile food vendor may place one identification or menu sign and one table (not for seating customers) on the sidewalk or other area directly adjacent to his/her parked motor vehicle or other equipment.

(u) No person authorized to engage in the business of vending under this article and section shall do any of the following:

- (1) Obstruct traffic signals or regulatory signs;
- (2) Stop, stand or park any vehicle, pushcart or another other conveyance upon any street for the purpose of selling during the hours when parking, stopping and standing have been prohibited by signs or curb markings;
- (3) Use any conveyance that when fully loaded with merchandise, cannot be easily moved and maintained under control by the licensee, his employee, or an attendant;

- (5) Sell any goods, wares or merchandise within districts or on streets that have been or shall be hereafter so designated by the City Council;
- (6) Sound any device that produces a loud and raucous noise or operate any loudspeaker, public address system, radio, sound amplifier, or similar device to attract public attention, or otherwise violate noise regulations of the City Code; and,
- (7) Conduct their business in such a way as would restrict or interfere with the ingress or egress of the abutting property owner or tenant, create a nuisance, increase traffic congestion or delay, constitute a hazard to traffic, life or property, or obstruct adequate access to emergency and sanitation vehicles.

(v) A mobile food vendor shall comply with all City ordinances regulating noise.

Sec. 10-219. - Revocation or suspension.

- (a) *Grounds.* A license issued under this section may be revoked or suspended by the License Administrator for any of the following reasons:
- (1) Any fraud, misrepresentation, or false statement contained in the application for license;
 - (2) Any fraud, misrepresentation, or false statement made in connection with the selling of food;
 - (3) Any violation of this section or any applicable laws or provisions of this Code including, but not limited to Chapter 10 of this Code; or
 - (4) Conducting the business licensed under this section in an unlawful manner or in such a manner as to constitute a breach of the peace or a menace to the health, safety, or general welfare of the public.
- (b) *[Conviction of violation of section 10-218 (j)]* The License Administrator shall revoke a license issued under this section for any mobile food vendor who is convicted of three or more separate violations of the provisions of this section within any consecutive 12-month period. For purposes of this section conviction shall mean any finding of guilt or liability on the part of the mobile food vendor by a court of competent jurisdiction, and shall include any conviction that has previously been set aside.
- (c) *Notice.* To revoke or suspend a license, the License Administrator shall provide written notice to the license holder stating the revocation or suspension action taken, the grounds for such action, and the availability of an appeal under this section. Such notice shall be served personally upon the license holder or sent by regular U.S. mail to the license holder's address as stated in his/her application.
- (d) *Appeal.* A license holder aggrieved by the decision of the License Administrator under this section may file an appeal with the City Council.
- (e) *Re-application.* A person whose license has been revoked under this section may not re-apply for a new license for a period of six months after the effective date of the revocation.

Sec. 10-220. - Penalty.

It shall be unlawful for any person to violate the provisions of this section. Any person who violates any of the prohibitions or provisions of any article or section of this chapter shall be deemed guilty of a misdemeanor. Unless otherwise specified in the particular article or section for which the person stands convicted of violating, the penalty for such violation shall be in any amount not to exceed one thousand dollars (\$1,000.00) and/or imprisonment for any length of time not to exceed

three (3) months, in the discretion of the court. Each day any such violation or failure to perform such act shall continue shall constitute a separate offense, unless otherwise specifically provided.

Sec. 10-221. - Severability.

If any provision, clause, sentence, paragraph or other portion of this section or the application thereof to any person or circumstances shall be held to be invalid, that invalidity shall not affect the other provisions of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are declared to be severable.

Sec. 10-222. - Special districts.

(a) The City finds that the City's various and diverse neighborhoods and business districts have differing characteristics, and will be affected in varying ways by the operations of mobile food vendors. Thus, it is appropriate to provide for the creation of special districts subject to special rules governing mobile food vendors.

(b) The City council may by Ordinance establish a special district with defined geographic boundaries, and adopt special rules governing mobile food vendors to be applied, based on a reasonable showing of public health and/or public safety concerns demonstrating the need for different operation of mobile food vendors, within such special district. "Special rules" shall mean rules governing mobile food vendors that modify the general rules stated in this section, within that special district only. If adopted, such special rules shall take precedence over any conflicting general rules in this section. The special rules shall not prevent mobile food vendors from operating within the special district. The general rules in Section 10 shall continue to apply in a special district, unless specifically modified by the special rules.

(c) An application for the establishment of a special district may be submitted to the License Administrator by a neighborhood association that is registered as such with the planning department, or by a business improvement district. The proposed special district must lie within the geographic boundaries of such neighborhood association or business improvement district. An application by a neighborhood association or business improvement district shall contain:

- (1) A map indicating the boundaries of the proposed special district;
- (2) The name of the proposed special district;
- (3) The text of the proposed special rules to be applicable in the special district;
- (4) A copy of the signed resolution of the governing body of the business improvement district or neighborhood association approving the proposed special district and special rules;
- (5) Documentation showing that an official of the business improvement district or neighborhood association discussed the proposed special district and special rules with mobile food vendors who primarily operate in the proposed special district; and
- (6) Enumeration of the specific reason(s) for expansion or limitation of mobile food vendor activity based upon public health and/or public safety concerns.

Upon the filing of such an application, the Mayor or any City Councilmember may request that an Ordinance establishing such a special district and special rules be forwarded to the City Council for consideration and final action.

Sec. 10-223. - Periodic review.

The Mayor or his/her designee may, in conjunction with the License Administrator and Chief of Police or their designees, a representative from the City Council, a representative of the mobile food vendor industry, and other stakeholders as necessary, perform an annual review of mobile food vendor operations, the general rules in this section, and any special rules adopted under this section, and make recommendations as needed to the City Council for amendment of this section.

SECTION 2. REPEALER. That any other section of said ordinance in conflict with this ordinance is hereby repealed.

SECTION 3. SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, or application hereof, is for any reason held invalid or unconstitutional by any Court, such portion or application shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions or application hereof.

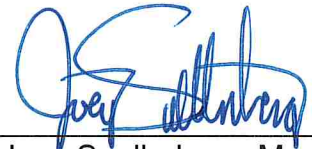
SECTION 4. EFFECTIVE DATE. This Ordinance shall take effect and be in force from and after its passage, approval, and publication as required by law.

PASSED AND APPROVED THIS 10th DAY OF APRIL, 2022

ATTEST:


Tyler Ficken, City Clerk




Joey Spellerberg, Mayor